

HALPERIN BATTAGLIA RAICHT, LLP

555 Madison Avenue, 9th Floor
New York, New York 10022
Telephone (212) 765-9100
Facsimile (212) 765-0964
Donna H. Lieberman, Esq.
Carrie E. Mitchell, Esq.

COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.

Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602
Telephone (201) 489-3000
Facsimile (201) 489-1536
Ilana Volkov, Esq.
Felice Yudkin, Esq.

Co-Counsel for the Class 10 Liquidation Trust

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
HON. GLORIA M. BURNS
CASE NO. 08-14631 (GMB)
(Jointly Administered)

In the Matter of:

SHAPES/ARCH HOLDINGS L.L.C., *et al.*,

Reorganized Debtors.

Chapter 11

**APPLICATION OF THE CLASS 10
LIQUIDATION TRUST PURSUANT TO
D.N.J. LBR 9013-1(j) FOR ENTRY OF
CONSENT ORDER RESOLVING THE
CLAIMS OF HAL AND DEBRA YATES,
ET. AL.**

HEARING DATE AND TIME:
N/A

TO: THE HONORABLE GLORIA M. BURNS
UNITED STATES BANKRUPTCY JUDGE:

The Class 10 Liquidation Trust (the “Class 10 Trust”), established upon the Effective Date (as defined hereafter) of the Chapter 11 plan of Shapes/Arch Holdings, L.L.C., et al., the above-captioned reorganized debtors and debtors-in-possession (together, the “Debtors”), by and

through the Trustee (as defined hereafter), submits this application (the “Application”) and respectfully represents:

I. INTRODUCTION AND JURISDICTION

1. This Application is submitted pursuant to D.N.J. LBR 9013-1(j) for entry of the accompanying Consent Order (the “Consent Order”) resolving the claims of Cody Yates, an infant by his guardians *ad litem* Hal and Debra Yates, and Hal and Debra Yates, individually, and Katie Yates (collectively, the “Claimant”).

2. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

II. BACKGROUND

4. The Debtors filed voluntary petitions for relief under Chapter 11 of the United States Code, as amended (the “Bankruptcy Code”), on March 16, 2008 (the “Filing Date”). The cases were jointly administered pursuant to this Court’s Order dated March 18, 2008. However, on March 30, 2009, the Court entered an Order closing the affiliated Chapter 11 cases: Shapes LLC (case no. 08-14632), Ultra LLC (case no. 08-14633), Delair LLC (case no. 08-14634), and Accu-Weld LLC (case no. 08-14635) and allowing the Chapter 11 case of Shapes/Arch Holdings L.L.C. (case no. 08-14631) to remain open.

5. The Debtors’ Third Amended Joint Plan of Reorganization (the plan, including amendments, exhibits, and modifications, being the “Plan”) was confirmed by Order of this Court dated July 24, 2008 (the “Confirmation Order”) and became effective on August 8, 2008 (the “Effective Date”).

6. On the Effective Date of the Plan, the Class 10 Trust came into existence, and pursuant to Sections 4.5, 5.2 and 5.3 of the Plan and Article IV of the Plan Administration Agreement (an exhibit to the Plan), the Trust, by its Trustee, Steven D. Sass (the “Trustee”), was empowered to, among other things, review and file objections to unsecured claims and bring avoidance actions.

7. On March 18, 2008, this Court entered an Order pursuant to Bankruptcy Rules 2002(a)(7) and 3003(c)(3) establishing the deadline for the filing of proofs of claim evidencing pre-petition claims (the “Bar Date Order”).

8. Pursuant to the Bar Date Order, the deadline for all persons and entities to file proofs of claim against the Debtors for claims that arose on or prior to the Filing Date was May 15, 2008.

9. Claimant filed proof of claim number 158 as an unsecured claim against the Debtors’ estates in the amount of \$1,000,000 (the “Proof of Claim”).

10. In addition, on January 29, 2008 Claimant filed an action in the Superior Court of New Jersey, Ocean County, captioned *CODY YATES, an infant by his guardians ad litem HAL and DEBRA YATES; and HAL and DEBRA YATES, Individually; KATIE YATES v. ULTRA HARDWARE PRODUCTS, LLC; ALUMINUM SHAPES, LLC; THE ARCH AMERICA COMPANY; THE HOME DEPOT, INC; RICKEL HOME CENTERS, INC; EOS PARTNERS L.P.; AND A-Z OWNER CORPORATIONS (1-5) (Fictitious Corporations); XYZ MANUFACTURING INC. (1-5); JOHN DOE MANAGEMENT COMPANY (1-5); and JANE AND JOHN DOES (1-5) (Fictitious Individuals)*, Case No. OCNL-435-08 alleging counts of Strict Products Liability; Failure to Test, Warn, or Instruct; Breach of Implied Warranty of Merchantability and of Fitness for Particular Purpose; Negligent Design and Manufacture;

Violations of the Consumer Fraud Act; Common Law Fraud; and Negligent Infliction of Emotional Distress on Bystander(s); and seeking a judgment in an amount in excess of \$1,000,000 (the “Action”).

11. As of the Filing Date, actions against the Debtors and their assets on account of pre-petition claims were barred by the automatic stay provisions of Section 362 of the Bankruptcy Code.

Negotiations with Hal and Debra Yates, et al.

12. The Class 10 Trust has reviewed the Proof of Claim, the assertions in the Action, information provided by the Claimant, and the Debtors’ books and records as they pertain to the Claimant, and has engaged in good faith, arms’ length negotiations with the Claimant.

13. The Class 10 Trust and the Claimant have determined that the Proof of Claim is duplicative of the assertions in the Action and, therefore, the Claimant has agreed to waive the Proof of Claim. In return, the Class 10 Trust has agreed to modify the automatic stay pursuant to 11 U.S.C. § 362(a) and the injunction provisions of the Plan and Confirmation Order to permit Claimant to proceed with the Action, upon the terms set forth in the accompanying Consent Order.

III. RELIEF REQUESTED AND BASIS THEREFOR

14. The Trustee believes that entry of the Consent Order is in the estates’ best interests. As a result of extensive negotiations with Claimant, the Trustee has been able to reach an agreement regarding the treatment of the Claimant’s Proof of Claim under the Debtors’ Plan. Therefore, the Trustee respectfully submits that cause exists for the entry of the Consent Order.

WHEREFORE, the Class 10 Trust respectfully requests that the Court enter the Consent Order and grant such other relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.

By: /s/ Ilana Volkov
Ilana Volkov

-and-

HALPERIN BATTAGLIA RAICHT, LLP
Donna H. Lieberman, Esq.
Carrie E. Mitchell, Esq.
555 Madison Avenue, 9th Floor
New York, New York 10022
Telephone: (212) 765-9100
Facsimile: (212) 765-0964

Co-Counsel for the Class 10
Liquidation Trust

Dated: Hackensack, New Jersey
April 14, 2010